BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT ISSUED BY THE CITY OF SUMNER TO THE CITY OF SUMNER ANIMAL SHELTER THE OTHER SIDE OF THE TRACKS NEIGHBORHOOD STEERING COMMITTEE, Appellant, v. THE CITY OF SUMNER, Respondent.	SHB No. 84-9 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

This matter, the request for review of a shoreline substantial development permit issued by the City of Sumner to the City of Sumner Animal Shelter, came on for hearing before the Shorelines Hearings Board, Lawrence J. Faulk (presiding), Rodney M. Kerslake, Nancy R. Burnett and Richard A. O'Neal, convened at Lacey, Washington on August 9 and 10, 1984.

Appellant was represented by Attorney at Law Ross Radley. Respondent City of Sumner was represented by City Attorney Gordon A. Scraggin.

Respondent filed a motion to dismiss appellant's request for review upon the ground that the Board does not have jurisdiction, as there is no substantial development proposed within the shorelines area that is within two hundred feet of the ordinary high water mark of the Stuck River.

Appellant filed a motion to remand the substantial development permit to the City of Sumner because the property line was changed by the City Council to delete any of the site or substantial development from the shoreline of the Stuck River.

The Board heard arguments on these motions and denied the motion to remand and left respondent's motion concerning jurisdiction before the Board.

Thereafter the hearing on the merits proceeded.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

The matter arises on a shoreline of the Stuck River within the City of Sumner.

II

The site is a portion of a larger parcel of land owned by the City of Sumner which was annexed by the City of Sumner in 1962, but is not contiguous to the city limits. The city's sewage treatment plant is adjacent and to the west of the site in question.

III

The project consists of a 14' by 20' animal control shelter which is a totally enclosed, sound proof structure, designed to hold a maximum of six animals. It will be constructed of concrete block with no outside runs. The only windows will be non-opening, located high on the wall facing the Puyallup River.

IV

On October 26, 1983, the City filed an application for a shoreline substantial development permit to construct the animal shelter. The City also filed an environmental checklist on November 21, 1983. On November 23, 1983, the environmental checklist was reviewed by the City's environmental assessment committee and on January 3, 1984, a declaration of non-significance was issued.

V

The testimony and exhibits offered by the City shows that the City considered noise, land use, population, housing, transportation, circulation, public services and human health in its decision to issue a declaration of non-significance under SEPA.

VI

On January 5, 1984, the planning commission held a public hearing on the application for the shoreline substantial development permit. Notice of the public hearing was published and all persons desiring to speak were given the opportunity. In addition, the commission considered a letter from appellant in which exhibit R-8 indicates that he expressed his concerns with the project. On March 1, 1984, a second public hearing was held. Appellant

advised the planning commission, that although notice of the January 5, 1984 meeting was properly published, notices were not posted in three places on the property concerned as required by Section 12.10.030 of the Sumner City code. In view of this oversight, the planning commission agreed to hold another public hearing on March 1, 1984. Notices of this meeting were properly published and posted on the property concerned, except that the notice did not include a statement advising that written comments concerning the applications or a request to receive a copy of the final order as required by RCW 90.58.140(4)(b)(iii) could be submitted. At the public hearing on March 1, 1984, all exhibits and testimony previously taken at the hearing on January 5, 1984, were made a part of the record of the second public hearing, the planning commission approved the issuance of a shoreline substantial development permit.

VII

Feeling aggrieved by the decision, the appellant filed a request for review to the Shorelines Hearings Board on April 5, 1984.

A pre-hearing conference was held on May 23, 1984. Thereafter a pre-hearing order was entered setting forth the issues and indicating that, in an effort to settle the matter, the City would explore the possibility of conducting a public hearing concerning selection of a site for the animal shelter. On July 2, 1984, the City council held a public hearing and reviewed all of the available sites. On July 9, 1984, the City council selected the Harrison Street site.

VIII

The issues identified in the pre-hearing order were as follows:

1. Did the City of Sumner comply with the Sumner Shoreline Master Program notice requirements? (Section 7.02.02)

2. Does the proposed project comply with the Sumner Shoreline Master Program Section 7.04.01?

3. Did the City of Sumner comply with the State Environmental Policy Act (SEPA) in issuing a declaration of non-significance? More specifically in regard to:

- noise
- land use
- population
- housing
- transportation/circulation
- public services
- human health

4. Was the appearance of fairness doctrine violated when the City staff determined that an Environmental Impact Statement was not required when they are, in essence, proposing the project?

IX

Testimony showed that approximately eleven or more feet of the northwest corner of the site as described in the shoreline permit issued by the City of Sumner, is within the shorelines area, within 200 feet of the ordinary high water mark of the Stuck River. The construction of a portion of a chain link fence, extension of a six inch sanitary sewer line, extension of a three-quarter inch water line and the construction of the driveway approach, the latter two of which are within the existing right-of-way of Harrison Street, are within the shoreline area. There are no buildings proposed within 200 feet of the ordinary high water mark of the Stuck River.

X

Geographically, the site where the proposed development is to be located is separated from a majority of the single-family residences in the area by SR 410 freeway. The site is reached by a single street, State Street.

XI

The testimony and exhibits of the City proved that the site is not within the one hundred year floodplain. State Street access to the facility does infrequently become flooded and impassable for short periods of time, normally 24 to 48 hours.

XII

The proposed development is in the urban environment under the City of Sumner Shoreline Master Program (SSMP).

XIII

The SSMP provides with regard to an urban environment:

> The objective of the urban environment is to insure optimum utilization of shorelines within urbanized areas by providing for intensive public use and by managing development so that it enhances and maintains shorelines for the multiplicity of urban areas.
>
> The urban environment is an area of high intensity land use including residential, commercial and industrial development. The environment does not necessarily include all shorelines within an incorporated city, but is particularly suitable to those areas presently subjected to extremely intensive use pressures, as well as areas planned to accommodate urban expansion. Shorelines for future urban expansion should present few biophysical limitations for urban activities and not have a high priority for designation as an alternative environment.

Section 12.10.030 of the Sumner City Code (Section 7.02.020 of SSMP) reads as follows:

12.10.030 Publishing and Posting Notices. The applicant shall cause to be published notices once a week for two consecutive weeks in a newspaper of general circulation in the city. In addition, he shall post three copies of the notice on the property concerned. Each notice shall include a statement that any person desiring to present his views to the planning commission may do so in writing or notify the planning commission in person at a public hearing.

XV

Section 12.10.100 of the Sumner City Code (7.04.01 of SSMP) reads as follows:

12.10.100 Application Review--Criteria. The planning commission shall review an application for a permit based on the following:

1. The application;
2. the Environmental Impact Statement, if one is required;
3. written comments from interested persons;
4. information and comment from other city departments affected;
5. independent study of the planning commission;
6. evidence presented at a public hearing.

XVI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to the following

CONCLUSIONS OF LAW

I

Appellant, having requested review, bears the burden of proof in this proceeding. RCW 90.58.140(7).

II

Appellant urges that the annexation of the site by the City of Sumner may be inconsistent with RCW 35.13.180. This contention is not germane to any

issue in the pre-hearing order entered on May 29, 1984, in this matter and we do not address it for that reason.

III

The Board has jurisdiction to review the shoreline substantial development permit granted by the City of Sumner. RCW 90.58.180(1). In reviewing the permit, we will review only the proposed development permitted and not as modified by the applicant subsequent to issuance of the permit. Hayes v. Yount, 87 Wn.2d 280, 552 P2d 1038 (1976). In addition, the issue as to whether or not the proposed development is a substantial development as that term is defined in RCW 90.58.030(3)(e) was not identified as an issue in the pre-hearing order entered on May 24, 1984, in this matter. For the aforementioned reasons, the motion to dismiss this request for review on grounds that the proposal is not a shoreline substantial development is denied.

IV

The testimony and exhibits offered by the city established that the notice requirements were not fully complied with as required by RCW 90.58.140(4)(b)(iii).

Notwithstanding, appellant did submit written comments and they were considered at the January 5, 1984 meeting of the planning commission. Appellant has not shown prejudice on the facts of this case. Such an omission in the notice could be fatal to permit action by local government if an appellant fails to submit written comments because of that omission. It is not so in this case.

V

The evidence established that the planning commission complied with the

review criteria in the SSMP.

VI

The evidence established that the city complied with SEPA Chapter 43.21C RCW in issuing a declaration of non-significance.

VII

The Environmental Assessment Committee of the city is not required by ordinance or statute to hold a public hearing when reviewing an environmental check-list, nor was a hearing held prior to the declaration of non-significance.

The appearance of fairness doctrine has not been applied to administrative action except where a public hearing was required, see Polygon Corp. v. City of Seattle, 90 Wn.2d 59, 578 P2d 1309 (1978), and where such action is quasi-judicial in nature. See Evergreen School District v. Clark County Committee on District Organization, 27 Wn.App 820, 621 P2d 770 (1980) and RCW 42.36.010.

The court in Polygon v. Seattle, supra, refused to extend the doctrine to the action of a building superintendent imposing conditions under SEPA on a building permit which conformed to existing zoning requirements.

VIII

In summary, the city met notice requirements, followed correct review criteria, complied with SEPA and did not violate the appearance of fairness doctrine. The substantial development permit should be affirmed. We express no opinion as to changes in the development proposed by the applicant subsequent to issuance of the permit in question.

IX

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The shoreline substantial development permit granted by the City of Sumner to itself for construction of an animal shelter is affirmed.

DATED this 19th day of September, 1984.

SHORELINES HEARINGS BOARD

9/26/84

LAWRENCE J. FAULK, Vice Chairman

RODNEY M. KERSLAKE, Member

RICHARD A. O'NEAL, Member

NANCY R. BURNETT, Member

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT ISSUED BY THE TOWN OF FRIDAY HARBOR TO ERNEST AND MONALEE ZIEBELL, 1901 CORPORATION and FREDERICK L. ELLIS, Appellants, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Intervenor, v. TOWN OF FRIDAY HARBOR and ERNEST and MONALEE ZIEBELL, Respondents.	SHB Nos. 84-10 and 84-13 ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Intervenor, Department of Ecology, filed a Motion for Summary Judgment on June 14, 1984. The motion came on for hearing before the

Shorelines Hearings Board; Gayle Rothrock, Lawrence J. Faulk (presiding), A. M. Bud O'Meara, Nancy R. Burnett, and Rodney Kerslake, Members, convened at Lacey, Washington, on June 27, 1984.

Appellants were not represented. Respondents were represented by attorney Donald Eaton. Intervenor, the Department of Ecology, was represented by Patricia H. O'Brien. The permittee was represented by attorney John O. Linde. The proceedings were recorded electronically and by Marcia Erwin.

Having considered the motion, the undisputed facts, the briefs in support and opposition for the motion and the files and records herein,

The Shorelines Hearings Board concludes that the motion should be granted.

The Board's reasoning is that the term "nonconforming use" as utilized in the Friday Harbor Shoreline Master Program does not differentiate between "use" and "building" and, therefore, must be considered to include both. Anderson, R., American Law of Zoning, 2nd Go, Section 6.01. The Board further notes that the term "development" as defined in the Shoreline Management Act, RCW 90.58.030(3)(d), includes structures as well as use.

From these Conclusions, the Board enters this

ORDER

The shoreline substantial development permit issued by the Town of Friday Harbor on February 16, 1984, to Ernest and Monalee Ziebell is hereby vacated and the matter remanded to the Town of Friday Harbor for further proceedings.

DONE at Lacey, Washington, this 29TH day of June, 1984.

SHORELINES HEARINGS BOARD

4/27/84

LAWRENCE J. FAULK, Vice Chairman

GAYLE ROTHROCK, Chairman

NANCY R. BURNETT, Member

RODNEY KERSLAKE, Member

A. M. O'MEARA, Member

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT ISSUED BY SKAGIT COUNTY TO SKAGIT COUNTY PUBLIC WORKS DEPARTMENT, CITIZENS FOR ORDERLY GROWTH Appellants, v. SKAGIT COUNTY AND SKAGIT COUNTY PUBLIC WORKS DEPARTMENT, Respondents, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Third Party.	SHB No. 84-17 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, a request for review of a shoreline substantial development permit granted by Skagit County to Skagit County Public Works Department, came on for hearing before the Shorelines Hearings

Board; Lawrence J. Faulk, Chairman, Gayle Rothrock, Nancy Burnett Rodney M. Kerslake and Beryl Robison, convened at Mt. Vernon, Washington on October 24 and 25, 1984 and conveyned at Lacey, Washington on October 31, November 1, and November 28, 1984. Administrative Appeals Judge, William A. Harrison, presiding.

Appellant Citizens for Orderly Growth appeared by its attorneys, Keith W. Dearborn and Alison Moss. Respondent Skagit County appeared by John R. Moffat, Chief Civil Deputy Prosecuting Attorney. State of Washington Department of Ecology appeared by Allan T. Miller, Jr., Assistant Attorney General. Reporter Gene Barker provided court reporting services.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

This matter arises in Skagit County southwest of Burlington.

II

The Skagit River flows through the area in question. The River is diked to protect against flooding. Flood control storage also exists in the mountainous origins of the River at Upper Baker and Ross Dams.

III

Gages Slough lies north of the Skagit River and somewhat parallel to it. Historically, the Slough was a sub-channel of the River. In modern times, the dikes of the River have isolated the Slough from the

River. The waters of the Slough are still or slow-moving in contrast to waters within the diked channel of the River.

IV

Presently, a man-made outfall joins the Slough to the River. This pierces the dike to allow the Slough to drain by gravity into the River. A flapgate on the mouth of the outfall prevents the River from flowing into the Slough.

V

During the heavy rainfalls of winter, the level of the Skagit River rises above the Slough outfall barring drainage of the Slough. During these times, the Slough floods adjoining crop lands along its lower reaches (south of McCorquedale Road).

VI

In 1978, Skagit County proposed that a pump station be built to pump mechanically the excess storm water out of Gages Slough and into the Skagit River through a discharge line passing from the pump station to the River. This was proposed for financing by local assessment and failed on that basis.

VII

In 1982, Skagit County sought the advice of consulting engineers. Regarding Gages Slough, the engineer's report recommended a two phase approach: (1) clean the Slough and (2) install the type of pump which

the County had proposed in 1978.[1] The phase one cleaning wa. completed but did not alleviate the flooding.

VIII

In December, 1983, respondent Skagit County Public Works Department filed an application with Skagit County for a shoreline substantial development permit for a pump station to control the flooding of Gages Slough.

IX

The proposed pump would automatically turn on when the water level in Gages Slough is approaching flood level at 20 feet above mean sea level (M.S.L.). It would continue to run until the level of water in the Slough subsides to 18 feet M.S.L. At this point, the pump would automatically shut off.

X

The bottom elevation of Gages Slough near the proposed pump site is 15.7 feet M.S.L. Presently, Gages Slough will be drained by the gravity outfall in summer down to this 15.7 foot M.S.L. The water level critical to maintenance of fish or wildlife throughout the Slough in the greater area in question is 14 feet M.S.L.

1/ In the long run, the engineer's report also endorsed formation of a drainage district, apparently of the type which could assess and regulate and which had been rejected by the public in 1978.

XI

The reduction of peak water lever in the Slough, as proposed, would not lower the level of the Slough below the present minimum nor cause substantial adverse effect upon fish or wildlife. Moreover, the pollution filtration effect of Slough vegetation would be enhanced by the lowering of peak water level in the Slough as proposed.

XII

The discharge line from the proposed pump would enter the "shoreline," as defined in the Shoreline Management Act (SMA) at RCW 90.58.030(2)(d), that being the "wetland" 200 feet from the ordinary high water mark of the Skagit River. This was the theory upon which application was made for a shoreline permit. Respondents contend that Gages Slough itself, where the pump would be located, is not a "shoreline" under the SMA. Appellant contends to the contrary.

XIII

Skagit County prepared an environmental checklist for the proposed pump under the State Environmental Policy Act (SEPA), chapter 43.21C RCW. It then circulated a proposed declaration of non-significance to agencies with jurisdiction including the State Departments of Game, Fisheries, and Ecology. It received no comment and proceeded to issue a final declaration of non-significance.

XIV

The Skagit County Shoreline Master Program (SCSMP) provides:

> 1. The following components of utilities, essentially shoreline dependent, should be allowed on shorelines, providing they are located to cause

no adverse impacts to the shoreline environment and other uses.

a. Water system intake facilities and outfall pipes.

Section 7.18.1B(1) (page 7-120).

XV

On March 21, 1984, Skagit County granted a shoreline substantial development permit for the proposed pump. On May 2, 1984, appellant requested review of the permit by this Board. Department of Ecology (DOE) was joined.

XVI

All or nearly all of Gages Slough is beyond the "shoreline" 200 foot strip bordering the Skagit River.

XVII

The dikes of the Skagit River provide protection from floods up to the level which would occur once in 14 years on the average ("14 year flood"). A 14 year flood involves 60% of the water volume of the 100 year flood. The dikes of the Skagit have not been breached since 1951, a period of 34 years.

XVIII

Were the 100 year flood to occur, the dikes of the Skagit River would be breached, although at what point is unknown. The resulting floodwater outside the dikes would innundate large areas of western Skagit County with slow moving waters known as "sheet-flow." In such an event, Gages Slough would be too greatly overwhelmed to direct the course of floodwaters. Rather, the Slough would become an

undistinguished portion of the vast expanse of submerged land under the sheet-flow of water.

XIX

Gages Slough, at present, is a marsh or bog. However, its water level does not rise and fall in unison with the Skagit River.

XX

The Federal Emergency Management Agency has not designated any floodway for the Skagit River in the area concerned.

XXI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact the Board comes to these

CONCLUSIONS OF LAW

I

We review the proposed development for consistency with the applicable (Skagit County) Shoreline Master Program and the Shoreline Management Act (SMA). RCW 90.58.140(2)(b). We also review for compliance with the State Environmental Policy Act (SEPA), chapter 43.21C RCW. King Co. Chap W.E.C. v. Seattle, SHB No. 11 (1973) and Coughlin v. Seattle, SHB No. 77-18 (1977).

II

Appellant, having requested review, bears the burden of proof in this proceeding. RCW 90.58.140(7).

III

SEPA. The subject shoreline permit was issued after consideration

of environmental factors. See Sisley v. San Juan County, 89 Wn.2d 78 569 P.2d 712 (1977). Appellant has not shown that the DNS was materially incorrect. Issuance of the DNS in this matter constituted procedural compliance with SEPA.

IV

Extent of Wetlands under the Shoreline Management Act. Appellant presents a threshold issue as to whether Gages Slough is a "wetland" as that term is used at RCW 90.58.030(2)(f) of the SMA. We have previously entered our Order Denying Motion for Summary Judgment dated July 27, 1984, setting forth our jurisdiction to review this issue and our reasoning in support thereof. That Order is incorporated herein by reference. We turn now to the merits of this issue.

V

This issue is governed by RCW 90.58.030(f) and (g) as implemented by WAC 173-22-030(2) and WAC 173-22-040(2) (see Appendix for full text). Although DOE has designated wetlands which do not include Gages Slough, in the event that any of the wetland designations shown on the maps conflict with the above criteria, the criteria shall control. WAC 173-22-055.

VI

Under the SMA definition of wetland, RCW 90.58.030(f) Gages Slough must be either (1) a floodway or (2) a marsh, bog, swamp, or river delta associated with the Skagit River.

VII

Appellant has failed to show that Gages Slough has flooded with

reasonable regularity, or that it is identifiable by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. Moreover, appellant has not shown that Gages Slough and vicinity cannot reasonably be expected to be protected from flood waters by the Skagit River dikes. Appellant has not proven that Gages Slough is a "wetland" by virtue of being a "floodway" as those terms are used in the SMA.

VIII

Appellant has proven that Gages Slough is a marsh or bog but not that it is associated with the Skagit River. Appellant has not proven that Gages Slough is a "wetland" by virtue of being an associated marsh or bog as those terms are used in the SMA.

IX

Appellant has not proven that Gages Slough is a "wetland" nor a "shoreline of the state" as those terms are used in the SMA. Neither this conclusion nor installation of the proposed pump restricts Skagit County's choices as to the best measures to protect against an extreme flood event.[2]

2/ Skagit County may even elect to include Gages Slough in the SCSMP under the proviso of RCW 90.58.030(2)(f) allowing optional inclusion of portions of a 100 year flood plain. We merely point out this election to illustrate our conclusion that the County's choices remain unrestricted, and express no opinion as to the advisability of this or any other measure as protection against an extreme flood event.

X

Master Program. Appellant has not proven that the proposed development is inconsistent with the Skagit County Master Program.

XI

Shoreline Management Act. Appellant has not proven that the proposed development would have significant adverse effect upon water quality, soils, groundwater or wildlife. The proposed development has not been shown to be inconsistent with the SMA nor with the substantive requirements of SEPA.

XII

Summary. Appellant has not proven that Gages Slough is a shoreline of the state (wetland) under the SMA, nor that the proposed development would have any significant adverse effect upon the quality of the environment nor that the proposed development is inconsistent with the SCSMP, the SMA, or SEPA. The shoreline substantial development permit should be affirmed.

XIII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

ORDER

The shoreline substantial development granted by Skagit County to Skagit County, Public Works Department, is hereby affirmed.

DONE at Lacey, Washington this 10th day of May, 1985.

SHORELINES HEARINGS BOARD

5/7/85

LAURENCE J. FAULK, Chairman

GAYLE ROTHROCK, Vice Chairman

NANCY BURNETT, Member

RODNEY M. KERSLAKE, Member

BERYL ROBISON, Member

William A. Harrison

WILLIAM A. HARRISON
Administrative Appeals Judge

APPENDIX

RCW 90.58.030(2)(f) and (g):

> (f) "Wetlands" or "wetland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all marshes, bogs, swamps, and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology: PROVIDED, That any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom;
>
> (g) "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

WAC 173-22-030(2):

> (2) "Associated wetlands" means those wetlands or wetland areas which either influence or are influenced by and are in proximity to any stream, river, lake, or tidal water, or combination thereof, subject to chapter 90.58 RCW.

WAC 173-22-040(2):

> (2) Riverine flood plains.

(a) The wetland area within the flood plains shall be not less than those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark or floodway pursuant to subsection (b) below, whichever is greater. The wetland area shall not be greater than the 100-year flood plain boundary as established by acceptable methods.

(b) Wetland boundaries shall remain as the 100-year flood plain boundary, as defined by chapter 173-22 WAC, unless local government chooses to change the wetland boundaries. If the boundaries are changed, those changes shall be according to one of the following methods:

(i) Appropriate surface soil type boundaries.

(ii) Changes in type, quantity or quality of vegetative ground cover.

(iii) Readily identifiable natural barriers or permanent flood control devices such as levees, dikes or revetments.

(iv) Any reasonable method which meets the objectives of the shoreline management act.

(c) The proposed revision of wetland boundaries by any of the above methods must be submitted to the department of ecology for review. Prior to submittal to the department of ecology, a decision as to the relative environmental significance of the revision shall be made pursuant to chapter 197-10 WAC, the SEPA guidelines. If the department of ecology is satisfied that the proposal conforms to the criteria contained herein, the local shoreline master program shall be revised to reflect the boundary changes. The department of ecology shall amend chapter 173-19 WAC (State Master Program) at a reasonable interval following amendment of the local shoreline master program.

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE CONDITIONAL USE PERMIT GRANTED BY CITY OF TACOMA TO PAT LARKIN AND NAMES, NAMES, NAMES & LARKIN, AND DENIED BY WASHINGTON STATE, DEPARTMENT OF ECOLOGY, PAT LARKIN and NAMES, NAMES, NAMES & LARKIN, and CITY OF TACOMA, Appellants, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	SHB No. 84-21 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the request for review of a shoreline substantial development permit and a conditional use permit came on for hearing before the Shorelines Hearings Board, Lawrence J. Faulk (presiding), Wick Dufford, Dennis Derickson, and Les Eldridge, Members, convened at Tacoma, Washington, on November 2, 1984.

Appellants, Pat Larkin and Names, Names, Names & Larkin, were represented by their attorney, William T. Lynn. Appellant City of Tacoma was not represented. Respondent Department of Ecology was represented by Jay J. Manning, Assistant Attorney General. Court Reporter Nancy A. Miller recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Board makes these

FINDINGS OF FACT

I

This matter arises on Ruston Way in the City of Tacoma. The area is the "S-6" Shoreline District, designated "urban" by the Tacoma Shoreline Master Program (TSMP).

II

The appellant, Names, Names, Names & Larkin (Names), is the owner of a project on Ruston Way in Tacoma known as The Lobster Shop. The project consists of an overwater restaurant constructed in 1980, and an old (pre-1969) overwater two-story building which has been in the past, used as a duplex. This case primarily concerns the second floor of that duplex building.

III

On September 27, 1979, the Department of Ecology approved a substantial development/conditional use permit issued by the City of Tacoma to the former owner allowing construction of the Lobster Shop Restaurant over the water on Ruston Way. The Lobster Shop is immediately adjacent to the building in question, located just

easterly of the small building. As part of this permit, the existing structure was slightly remodeled to allow office use and storage use of the building. The office use was limited to restaurant-related office space. Additionally, the storage use was also limited to restaurant-related storage.

IV

In March of 1981, the permits were revised. The revision allowed a change in the parking/landscaping plan for the facility. More importantly, for this case, the revision also allowed substantial remodeling of both the interior and exterior of the two-story building. No change in use, however, was allowed by the permit. The use was still limited to restaurant office and restaurant storage.

V

On June 23, 1981, the City of Tacoma issued a regulatory order to the former owner to halt any use of the building other than restaurant offices and restaurant storage. This order was issued because it became apparent that the former owner was using the second story of the building for general office use. Such a use of the building violated the terms of the permit.

VI

On July 1, 1981, the regulatory order was amended to give the former owners an opportunity to apply for the necessary permits to allow general office use of the second floor of the building.

VII

On December 30, 1981, the Department of Ecology (DOE) approved a

substantial development/conditional use permit issued by the City of Tacoma to the former owner to allow the upper floor of the duplex building to be used for general office use. That permit was limited to a period of two years from the date of approval (December 30, 1983) in order to allow time for the recoupment of development expenses.

VIII

In July of 1983, appellants purchased the property and thus acquired this problem.

IX

On November 16, 1983, the appellants submitted the subject substantial development/conditional use permit request. Under the requested permit, the upper floor would be used for general office space. The lower floor would continue to be utilized as an accessory restaurant office and for restaurant storage. Under the proposal, public access to the shoreline would be increased by making small decks on the northerly and easterly sides of the building accessible to the public. The property would be improved to include a public rest area and prominent signage to alert people on the adjacent pedestrian/bike path to the availability of the public access.

X

On April 17, 1984, the Tacoma City Council unanimously approved the permit, after receiving a recommendation for approval from the hearings examiner. There was no expression of citizen or other local opposition.

XI

On May 17, 1984, the DOE disapproved the conditional use permit.

XII

On June 13, 1984, feeling aggrieved by the decision of the DOE, the appellants appealed to this Board.

XIII

The Lobster Shop complex lies within an urban area, long highly developed, once heavily industrilized, now undergoing redevelopment emphasizing restaurants, parks and public recreation. The Lobster Shop restaurant attracts over 100,000 customers annually.

XIV

The ancillary structure in question contains about 2,400 square feet of floor space. The bottom floor consists of some 1,315 square feet. The upper floor, which is the main focus of this case, consists of approximately 1,085 square feet. The restaurant building nearby contains about 7,700 square feet. The area at issue, then, consists of less than 10% of the interior square footage of the overall development.

XV

The proposed general office use of the upper floor of the former duplex and the opening to public access of areas adjacent to the lower floor, would have no adverse environmental impacts, nor would the activities interfere with navigation or be harmful to public health.

XVI

The public access changes proposed are not well-conceived as an

effective design for attracting public use and would not significantly improve the public's opportunity to enjoy the shorelines.

XVII

Use of the upper floor of the duplex is limited because of the relatively small size of the space. Its size and separation from the restaurant make it impractical to incorporate into the restaurant operation as a banquet area or otherwise. It is not needed for restaurant-related storage or office space. It is located some distance from any retail stores and, therefore, any retail business use would oblige customers to make a special trip to an isolated shopping location. Only a retail business with minimal space requirements could be accommodated there. The upstairs location would present a barrier to access by the handicapped. Moreover, the experience of the past in renting this space for offices is that there is no identifiable market for its use by businesses which are particularly benefited by a shoreline location. In sum, no practical commercial use of the space which would be facilitated by this particular waterfront location is apparent.

XVIII

As far as the record shows the small floor space in question--isolated on the second floor of an overwater pre-1969 structure, ancillary to the primary development of the site--and the factors related to the practicality of its use are unique within the "S-6" Shoreline District.

XIX

The Board must decide whether the proposed use of the shoreline can be allowed as a conditional use, consistent with the Tacoma Shoreline Master Program (TSMP) and the policies of the Shoreline Management Act (SMA), embodied in RCW 90.58.020?

XX

The TSMP contains the following pertinent provisions:

a. Section 13.10.030 Definitions:

QQ. 'Water related use' means a use which is not intrinsically dependent upon a waterfront location but whose location on or near the waterfront will either facilitate its operation or will provide increased opportunity for general public use and enjoyment of shorelines and shoreline areas. Examples would include, but not be limited to the following:

. . .

2. Commercial - marine

a. Restaurants
b. Boat sales/supplies
c. Fish markets
d. Scuba, skin-diving, fishing sales/supplies
e. Other commercial uses which provide increased opportunities for general public use and enjoyment of shorelines and shoreline areas. (Emphasis added)

b. Section 13.10.090 'S-6' Shoreline District - Ruston Way

A. INTENT. The intent of the 'S-6' Shoreline District is to encourage development of a coordinated plan of mixed public and private water-dependent and water-related use activities, including commercial,

recreational, and open space development; and which will recognize the continued operation of pre-existing uses, but which will prohibit development of new residential and industrial use activities.

. . . .

F. SUBSTANTIAL DEVELOPMENT/CONDITIONAL USE ACTIVITIES. The following use activities shall be permitted subject to the issuance of a Susbstantial Development/Conditional Use Permit, provided that the applicant can demonstrate that any such use activity conforms with the criteria set forth in Section 13.10.380 of this chapter, and subject to approval of the Department of Ecology as set forth in Section 13.10.180 of this chapter:

. . . .

4. Commercial, water-related, on piers.

XXI

WAC 173-14-140(1) and (2) states:

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided the applicant can demonstrate all of the following:

(a) That the proposed use will be consistent with the policies of RCW 90.58.020 and the Policies of the master program.
(b) That the proposed use will not interfere with the normal public use of public shorelines.
(c) That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.
(d) That the proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located.
(e) That the public interest suffers no substantial detrimental effect.
(2) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can

> demonstrate, in addition to the criteria set forth in WAC 173-14-140(1) above, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.

These conditional use criteria are repeated verbatim in TSMP section 13.10.180.B.

XVII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The remodeled duplex, as a pre-existing structure, is authorized to be maintained on the site by virtue of RCW 90.58.270. This case presents a bare question of the appropriate use to be made of a part of this building, located over the water in an urbanized area where the natural shorelines were substantially altered years ago.

II

Since the proposed general office use is a change of use from that originally permitted for this space, the decision of the City of Tacoma to require a new permit was appropriate. Gislason v. Friday Harbor, SHB No. 81-22 (1981). The new use is beyond the scope and intent of the original permit. WAC 173-14-064(2)(d). The interim permit authorizing such use for two years was not intended as a ruling on the merits of the change of use question as a permanent matter.

III

Appellants would characterize the general office use proposed as "water related" under the TSMP and, therefore, as a "listed" conditional use. They assert that this is so because the overall project is "water related," providing access through the restaurant for substantial numbers of people to enjoy the shorelines of the state.

In some contexts the Board has justified the shoreline location of uses which have no intrinsic or economic need for such siting on the basis of public access gains achieved by the project as a whole. (E.g., Smith v. New England Fish Company, SHB 158 (1974); Allison Fairview Neighborhood Assoc. v. Seattle, SHB 205 (1976).) However, this "integrated project" theory has not been applied where the proposal is to change part of the use mix for an already completed project to an activity which by itself is clearly not water-related. (E.g., Adams v. Seattle, SHB 156 (1975).)

The Board declines to apply this approach here. General office use does not, either intrinsically or economically, require a waterfront location. We are concerned that peacemeal change to non water-related uses within projects initially authorized on the basis of a different use pattern may provide a tempting method for circumventing the siting preferences of the SMA and the master programs which implement it. We are influenced in our decision on this point here by the fact that the proposed general office use would be located over the water.

Moreover, we conclude that the additions to public access proposed

in connection with the requested general office use are essentially cosmetic and do not support applying the "integrated project" approach to this change of use application viewed in isolation from the total Lobster Shop project.

Under the TSMP a water related use is one whose location on or near the waterfront will "either facilitate its operation or will provide increased opportunity for public use and enjoyment of the shorelines and shoreline areas." Section 13.10.030. We conclude that the applied for use of the shorelines in this case fails to satisfy this definition. Therefore, the proposal is not for a "listed" conditional use under TSMP Section 13.10.090, applying to the "S-6" Shoreline District. It must be subjected to the additional criteria for "unlisted" conditional uses.

IV

Notwithstanding the above, we are pursuaded under the peculiar facts, the proposed general office use in this instance meets the "extraordinary circumstances" standard of TSMP 13.10.180.B.2 and WAC 173-14-140(2). The size, location and, to some extent, the character of the space at issue are dictated by pre-SMA building decisions preserved by the Act. The choice appears to be between renting this small second story area for general office use and having it lie idle.

General office use within the "S-6" Shoreline District is not prohibited. It is simply not among these use which are expressly promoted by the TSMP for the area. The circumstances here preclude

any other reasonable use of the pre-SMA interior space which is the subject of this application.

This conclusion should not be construed to mean that in another case the Board will not look at the entire project complex for the purposes of determining whether reasonable use of the property is precluded. This decision is expressly limited to the use of a small, isolated space within a pre-existing structure under the specific facts presented. However, this case draws attention to the need by DOE and local governments to look more closely at the problems and potentials of rehabilitating older pre-SMA, urban waterfront sites and structures when considering future WAC and local master program revisions.

V

The proposed use meets the "ordinary" criteria for conditional uses found in TSMP 13.10.B.1 and WAC 173-14-140(1). The policies of the master program for the "S-6" Shoreline District, while not positively advanced, are not contravened by this minimal variation from the norm. Any interference with public use of the shorelines presented by the structure is grandfathered under the SMA. The building is compatible in design with its surroundings. The general office use will not conflict with other permitted activities within the area. No environmental impacts will result. No substantial public interest problem has been identified.

VI

Because the factors relating to use of the space are unique, we

conclude that the application cannot be reversed on the basis of potential adverse cumulative impacts. TSMP 13.10.B.4; WAC 173-14-140(4).

VII

The proposed use is not inconsistent with RCW 90.58.020. Department of Ecology v. Ballard Elks, 84 Wn.2d 551, 527 P.2d 1121 (1974) teaches that on urban shorelines, already extensively developed in the past, decisions concerning shoreline activities may be approached with a practical eye. As in Ballard Elks, we believe here that to deny the proposed use would be "to ignore the realities of the situation and would unduly penalize appellant without serving any substantive public interest." 84 Wn.2d at 554. Accordingly, under the facts, we conclude that the use authorized by the City of Tacoma is a "reasonable and appropriate" use of the shorelines within the policies of the SMA.

VIII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The substantial development permit and conditional use permit granted by the City of Tacoma to the appellant is affirmed.

DATED this 24th day of December, 1984.

SHORELINES HEARINGS BOARD

12/14/84

LAWRENCE J. FAULK, Vice Chairman

WICK DUFFORD, Lawyer Member

DENNIS DERICKSON, Member

LES ELDRIDGE, Member

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE SUBSTANTIAL DEVELOPMENT AND VARIANCE PERMIT GRANTED BY KING COUNTY TO R.G. HOSTETLER, J. HOWARD AND BARBARA G. PLIMPTON, ROBERT FERGUSON, and MR. and MRS. PHILIP BLAKE, Appellants, v. KING COUNTY, R.G. HOSTETLER, and STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondents.	SHB Nos. 84-23, 84-24 & 84-25 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the request for review of a decision to issue a shoreline substantial development permit and shoreline variance, came on for hearing before the Shorelines Hearings Board, Gayle Rothrock, Chairman, Lawrence J. Faulk, Rodney M. Kerslake, Richard A. O'Neal, Nancy R. Burnett, and Wick Dufford, on October 15, 1984, in Seattle, Washington. Mr. Dufford presided.

Appellants Plimpton, Ferguson and Blake all appeared pro se. Respondent King County did not appear. Respondent Hostetler was represented by Alan L. Froelich, attorney at law. Respondent Department of Ecology was represented by Jay J. Manning, Assistant Attorney General.

Witnesses were sworn and testified. Exhibits were examined. From the testimony heard and exhibits examined, the Board makes these

FINDINGS OF FACT

I

This matter arises in King County, along the shores of Lake Washington near Kirkland in a shoreline environment designated "urban" under the King County Shoreline Master Program (KCSMP). Lake Washington, because of its size, is a shoreline of statewide significance as defined in the Shoreline Management Act.

II

The respondent-permittee, Hostetler, is the owner of residential waterfront property and adjoining shorelands. The appellants are owners of neighboring properties in a tier ranging inland from Hostetler's. Both Hostetler's property and the properties of appellants were at an earlier time part of a tract in single ownership. When this tract was broken up, the purchasers all acquired an interest in a narrow non-residential parcel running along one side of each lot, terminating in a slim section of beach with adjoining shorelands. This parcel is called the community beach lot and all who share an interest in it have rights of access to the beach and the

lake. The community beach lot is immediately adjacent to Hostetler's property along the waterfront to the north.

III

Prior to 1969, a community dock was built into the lake from the community beach lot. This structure is now some 130 feet long. At one time it was "L" shaped with the foot of the "L" extending south and resting on four pilings. The decking for this portion of the dock no longer exists, but the four pilings are still in place. The appellants are users of the community dock.

IV

There is a dispute between the appellants and Hostetler as to whether the four pilings lie on Hostetler's property or on the shorelands which form part of the community beach lot. Hostetler says the pilings are on his property. Appellants say they are on the community beach lot. In a 1976 decision, the King County Superior Court (Civil No. 796711) entered Findings of Fact, Conclusions of Law and a Judgment establishing the lateral shoreland boundary between these two lots in descriptive terms. Hostetler and the appellants now read this decision in different ways, each interpreting it to support his own view of where the pilings are located.

V

In February of 1984, Hostetler applied to King County for the permits required under the Shoreline Management Act (SMA) to build a new dock extending waterward from his own lot. The proposal called for an "L" shaped single family residential dock 110 feet long with

600 sqaure feet of surface area, plus two mooring pilings located sixteen feet off the end of the dock. The dock, as proposed, would be located 15 feet from Hostetler's south property line and approximately 33 feet from the closest point on what the application shows to be the north property line--the boundary with the community beach lot shorelands. The application shows the four old pilings in question as being on Hostetler's property and requests permission to remove these pilings as a part of the new dock project.

VI

The water depth at the end of the proposed new dock measures approximately seven feet. The water depth 80 feet out from shore measures approximately four feet, a water depth insufficient to moor sailboats and larger powered pleasure craft. Such boats are the type and size commonly moored in the neighborhood. Moorage of such pleasure craft in front of single family residences is a permitted use in the "urban" shoreline environment under the KCSMP. The three docks in the immediate vicinity measure 125 feet, 130 feet and 128 feet long.

VII

The two mooring pilings requested at the end of the new dock are to allow a four-point mooring to secure a boat against wind and waves and to keep it from chafing against the dock.

VIII

The plans for Hostetler's proposed dock call for it to be angled towards the community dock with the foot of its "L" shape pointing towards the community dock. The result will be constricted water

space near the ends of the two docks unless the four old pilings are removed.

IX

Hostetler's proposed dock is no closer to his south property line because of the side line set-back for docks established under the KCSMP. He has chosen the angle of the new dock from the shore in order for the dock to run parallel to his south property line. Given the configuration of his lot, his proposal puts the proposed dock as far from the community dock on the north as is possible without intruding into the property of his neighbor on the south.

X

In connection with the processing of Hostetler's application, the shoreline planner for King County assigned to the matter reviewed relevant documents, including the Findings and Conclusions from King County No. 796711, and visited and examined the site of the proposal. The record and his field observations caused him to conclude that Hostetler's belief that the four old pilings are on Hostetler's property is reasonable. He recommended that the permit, as applied for, be granted.

XI

On May 23, 1984, King County issued a decision approving Hostetler's application. The approved project included the removal of the four old pilings. Indeed the removal of these pilings formed the basis of the approval insofar as non-interference with navigation is concerned.

XII

On June 14, 1984, the Department of Ecology approved the shoreline variance relating to the length of the proposed dock.

XIII

The appellant neighbors sought review before this Board on June 22, 1984, raising three issues:

1. Whether the King County Master Program requires ownership of property as a prerequisite for a shoreline permit to develop that property?

2. Whether the removal of the four old pilings allowed by the shoreline permit is consistent with the King County Shoreline Master Program or the Shoreline Management Act?

3. Whether the proposed dock is consistent with the King County Shoreline Master Program and the Shoreline Management Act?

IV

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Docks (piers) are permitted in the urban shoreline environment under the KCSMP, Section 25.16.140. That section limits length as follows:

> The maximum waterward intrusion of any portion of any pier shall be eighty feet, or the point where the water depth is thirteen feet below the ordinary high water mark, whichever is reached first.

Accordingly, the County properly required a variance for the dock proposed by Hostetler to extend 110 feet with mooring pilings 126 feet off shore.

II

Neither the SMA, chapter 90.58 RCW, nor the rules of the DOE implementing the point system for developments on shorelines of the state, chapter 173-14 WAC, require an interest in the property before a permit to develop can be granted. Casey v. City of Tacoma, SHB No. 79-19 (1979). Likewise, the KCSMP does not require ownership of property as a prerequisite for a shoreline permit to develop that property. It does require that the identity of the owner be disclosed, but the County does not attempt to look behind the assertions of ownership made in applications for such permits.

III

Removal of the four old pilings allowed by the permit at issue is not inconsistent with any provision of the KCSMP or the SMA. Such removal would eliminate a hazard to navigation, a result manifestly in keeping with shoreline management policies.

IV

The proposed dock is consistent with the KCSMP and the SMA, if the four old pilings are removed. The use is a permitted use under the master program and a preferred use under policies of the Act. The extra length of the dock is justified under the relevant variance criteria set forth in WAC 173-14-150(3).

V

The strict application of the 80-foot length limitation would preclude a reasonable permitted use: the mooring of boats of moderate draft, a practice commonly carried on elsewhere in the neighborhood. The master program suggests that a 13-foot water depth is considered appropriate for such moorage, almost twice the depth that will be made available here even with the increased dock length. The hardship requiring the variance is related to naturally occurring shallow water and does not result from deed restrictions or the applicant's own actions. Moreover, the variance will not constitute a grant of special privilege not enjoyed by other properties in the area. The proposed dock will protrude a shorter distance offshore than any docks on surrounding properties. It is the minimum necessary relief to allow the mooring of pleasure craft of modest draft.

VI

Given the constraints imposed by law (15-foot side property line set back, KCSMP Section 25.16.120C.), and the size and configuration on Hostetler's property, the project provides the most room possible for other like activities in the area. It is in location and design compatible with such uses and will not cause adverse effects to adjacent properties or the shoreline environment designation. However, this will not be the case unless the four old pilings, which are the focus of the controversy, are removed. Similarly public rights of navigation, public rights to use the shorelines and the public interest generally will not be adversely affected if the fou-

old pilings are taken out. If they are not removed, though, the adjacent properties and navigational values will be negatively affected.

VII

Under RCW 90.58.180(1) this Board is empowered to review the granting, denying or rescinding of permits on shorelines of the state issued pursuant to RCW 90.58.140. It is not empowered to quiet title to real property. Neither is King County so empowered when it rules on shorelines permits. The most the County can do is to make tentative judgments about property boundaries as an aid in deciding whether a particular development as proposed is reasonable and appropriate. The most the Board can do is to review the permit as conditioned and measure it against the statutory criteria set forth in RCW 90.58.140. The property line dispute which the parties raise cannot be resolved in this forum.

VIII

The limitations on this Board's jurisdiction also mean, of course, that it cannot repeal the law of trespass. Though the permit may allow the removal of the four old pilings, it authorizes this only as a matter of shorelines law. It does not give anyone access to another's property.

For this reason it is essential that the question of where the pilings lie be definitively resolved before construction commences under this permit. To build the dock and then discover that the old pilings cannot be removed would present a problem of interference wit

navigation which would be contrary both to the law and to the intent of the permit decision of King County in this case.

We construe the County's affirmative ruling on Hostetler's application to require the removal of the four old pilings as a condition precedent to the construction of the dock.

Absent resolution of the boundary issue, therefore, Hostetler can proceed to commence the project by removing the pilings only at his own peril.

IX

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The shoreline substantial development permit and the shoreline variance granted by King County to R.G. Hostetler under Application Nos. 010-84-SH, 009-84-SV, as construed above, are affirmed.

DATED this 14th day of January, 1985.

SHORELINES HEARINGS BOARD

WICK DUFFORD, Lawyer Member

GAYLE ROTHROCK, Chairman

LAWRENCE J. FAULK, Vice Chairman

RODNEY M. KERSLAKE, Member

RICHARD A. O'NEAL, Member

NANCY R. BURNETT, Member